BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/BM/JR/2024-25/ 30573

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Prudent Broking Services Private Limited
(PAN: AABCN5461G)

In the matter of

Mr. Alpesh Furiya and connected entities trading ahead of recommendations made during television shows on CNBC Awaaz hosted/ co-hosted by Mr. Pradeep Pandya

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Facts of the Case:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted investigation of the trading pattern of an entity viz. Mr. Alpesh Vasanji Furiya (hereinafter referred to as "Alpesh Furiya") during the period between November 01, 2019 to October 4, 2021 (hereinafter referred to as "investigation period"/ "IP") wherein a correlation was observed in the Buy-Today-Sell-Tomorrow (BTST) trades executed by the said entity and the stock recommendations given by Mr. Pradeep Baijnath Pandya (hereinafter referred to as "Pradeep Pandya") in the segment "Pandya Ka Funda" aired during the shows hosted by him in the Hindi business news channel viz. CNBC Awaaz *(hereinafter also referred to as "the channel")*. It was also observed that the trading activity of Alpesh Furiya and the stock recommendations given by Pradeep Pandya apparently had an impact in the prices/volumes of the said scrips. On the day of the stock recommendation, in most of the stocks gap up opening was observed compared to the previous close

price. Further, it also appeared in the BTST trades of the said client that he had planned his buying activity in specific scrips one day before the stock recommendation, *prima-faice*, after having prior information of the broadcast of the impending said stock recommendation. Moreover, there existed an apparent close relationship between Mr. Alpesh Furiya and Mr. Pradeep Pandya. Further, Mr. Alpesh Furiya is a registered authorised person of Prudent Broking Services Pvt. Ltd. (hereinafter referred to as "**Noticee**"). Pursuant to the investigation, it was observed that the Noticee have allegedly violated SEBI Circulars viz. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 and MIRSD/DR-1/Cir-16/09 dated November 6, 2009 read with Regulations 29 and 30 of SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as "**Brokers Regulations**").

Appointment of Adjudicating Officer:

2. SEBI appointed the undersigned as the Adjudicating Officer vide Order dated May 15, 2023 under section 19 of the Securities and Exchange Board of India (hereinafter referred to as "**SEBI Act**") read with Sub-section (1) of section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudicating Rules**") to enquire into and adjudge under the provisions of section 15HB of the SEBI Act the aforesaid alleged violations committed by the Noticee.

Show Cause Notice, Reply and Personal Hearing:

3. Show Cause Notice dated June 8, 2023 (hereinafter referred to as 'SCN') was issued in terms of Rule 4(1) of the Rules read with section 15-I of the SEBI Act to the Noticee alleging the following:

   a) During the course of the investigation, it was observed that certain entities related/ associated with Mr. Alpesh Furiya carried out trades ahead of recommendations given by Mr. Pradeep Pandya and/or Mr. Alpesh Furiya in the shows hosted/ co-hosted by Mr. Pradeep Pandya. The details of such entities are placed below:

Entity No.	Name of the entity	PAN No.	Relevance to the instant investigation
1.	Mr. Pradeep Pandya	AIIPP0780C	• Anchor/ co-anchor in various TV shows on CNBC Awaaz. • Provided recommendations regarding various scrips on aforesaid TV shows
2.	Ms. Nisha Pandya*	ARXPS7795L	• Spouse of Mr. Pradeep Pandya. • Anchor/ co-anchor in various TV shows on CNBC Bajar (CNBC's Gujarati business news channel).
3.	Mr. Alpesh Furiya	AAAPF0855A	• Guest Analyst in various shows on CNBC Awaaz. • Trading undertaken in his account ahead of recommendations made by Mr. Pradeep Pandya and/or Mr. Alpesh Furiya in the shows hosted/ co-hosted by Mr. Pradeep Pandya
4.	Ms. Alpa Alpesh Furiya	ADPPD4355B	• Spouse of Alpesh Furiya. • Trading undertaken by Mr. Alpesh Furiya in her account ahead of recommendations made by Mr. Pradeep Pandya and/or Mr. Alpesh Furiya in the shows hosted/ co-hosted by Mr. Pradeep Pandya.
5.	Alpesh Vasanji Furiya (HUF)	AALHA9417Q	• HUF entity of Alpesh Furiya and he is Karta. • Trading undertaken by Mr. Alpesh Furiya in its account ahead of recommendations made by Mr. Pradeep Pandya and/or Mr. Alpesh Furiya in the shows hosted/ co-hosted by Mr. Pradeep Pandya.
6.	Mr. Manish Furiya	AAAPF0856D	• Brother of Alpesh Furiya. • Trading undertaken by Mr. Alpesh Furiya in his account ahead of recommendations made by Mr. Pradeep Pandya and/or Mr. Alpesh Furiya in the shows hosted/ co-hosted by Mr. Pradeep Pandya.
7.	Manish V. Furiya (HUF)	AALHM8457L	• HUF entity of Manish Furiya and he is Karta. • Trading undertaken by Mr. Alpesh Furiya in its account ahead of recommendations made by Mr. Pradeep Pandya and/or Mr. Alpesh Furiya in the shows hosted/ co-hosted by Mr. Pradeep Pandya
8.	M/s Mahan Investment	ABQFM1625C	• Partnership firm having Mr. Alpesh Furiya (95% share) and Mr. Opu Funikant Nag (5% share) as Partners. Partnership deed executed on February 02, 2021 between the said partners. • Mr. Alpesh Furiya transferred funds in its trading account for carrying out trades. • Trading undertaken by Mr. Alpesh Furiya in its account ahead of recommendations made by Mr. Pradeep Pandya and/or Mr. Alpesh Furiya in the shows hosted/ co-hosted by Mr. Pradeep Pandya.
9.	M/s Toshee Trade	AARFT2714M	• Partnership firm having Mr. Alpesh Furiya (50% share) and Ms. Alpa Alpesh Furiya (50% share) as Partners. Partnership deed executed on February 02, 2021 between the said partners.

Entity No.	Name of the entity	PAN No.	Relevance to the instant investigation
			• Mr. Alpesh Furiya transferred funds in its trading account for carrying out trades. • Trading undertaken by Mr. Alpesh Furiya in its account ahead of recommendations made by Mr. Pradeep Pandya and/or Mr. Alpesh Furiya in the shows hosted/ co-hosted by Mr. Pradeep Pandya.
10.	Mr. Opu Funikant Nag	AEWPN1888H	• Mr. Opu Funikant Nag is an employee of Alpesh Furiya's who is registered as an Authorized Person (Trade Name - PAM Investments) with Prudent Broking Services Pvt. Ltd. • Partner in M/s Mahan Investment (5% share). • Trading undertaken by Mr. Opu Funikant Nag in its account on the advice of Alpesh Furiya ahead of recommendations made by Mr. Pradeep Pandya and/or Mr. Alpesh Furiya in the shows hosted/ co-hosted by Mr. Pradeep Pandya.

The Entity No. 3 to 9 in the above tables have been hereinafter collectively referred to as "Alpesh Group Entities".

b) It is alleged that Mr. Pradeep Pandya was one of the anchors in CNBC Awaaz who gave stock recommendations on live TV in various shows hosted/ co-hosted by him like mainly Aakhiri Sauda (आखिरी सौदा), Future Express, Traders Hotline etc. It is alleged that from the CDR data that, Mr. Pradeep Pandya had a total of 504 calls (Includes Call-in, Call-out and SMS) with Mr. Alpesh Furiya during January 06, 2020 to November 02, 2021 (period for with CDR data provided by TSPs) with total talk time of approximately 26 Hours 55 Minutes 38 Seconds. In this regard, Mr. Pradeep Pandya stated that he also had frequent calls with other guest analysts. However, it is alleged that Mr. Pradeep Pandya had a total of 55 Calls & SMS communications with all other guest analysts (who appeared on his show) combined together as compared to 504 Calls & SMS communications with Mr. Alpesh Furiya alone. Therefore, it is alleged that Mr. Pradeep Pandya rarely spoke with other guest analysts as compared to Mr. Alpesh Furiya. The disproportionately high number of telephonic communication exchanged between Mr. Pradeep Pandya and Mr. Alpesh Furiya indicate that they were in frequent communication with each other.

c) It is observed that Mr. Pradeep Pandya had taken a backup of WhatsApp chats between him and one "VS" for certain days in the month of June 2020 and emailed the said WhatsApp chat backup to himself (at Pradeep.Pandya@nw18.com) *vide* email dated June 17, 2020. Mr. Pradeep Pandya admitted that mobile viz. 8850683958 of Mr. Alpesh Furiya was saved by him in his mobile phone as "VS". Therefore, based on the admission of Mr. Pradeep Pandya and multiple instances of analysis of chat details indicate that the said WhatsApp chat is between Mr. Alpesh Furiya and Mr. Pradeep Pandya.

d) It is alleged from multiple instances of trades executed by Alpesh Group Entities read with the communication exchanged through WhatsApp chats between Mr. Pradeep Pandya and Mr. Alpesh Furiya regarding the scrips proposed to be recommended by Mr. Pradeep Pandya in his forthcoming shows that not only Mr. Pradeep Pandya used to tell Mr. Alpesh Furiya regarding scrips that he was going to recommend in his special segments/ shows in advance but also many a times Mr. Alpesh Furiya used to tell Mr. Pradeep Pandya to pick up specific scrips for recommendations which Mr. Pradeep Pandya used to accept and confirm back to Mr. Alpesh Furiya in advance.

e) It is alleged that Mr. Pradeep Pandya and Mr. Alpesh Furiya in connivance with each other were fraudulently fixing/ picking up scrips to be recommended by Mr. Pradeep Pandya in his shows. Further, Mr. Alpesh Furiya was taking advance trade positions in such scrips based on his advance knowledge of the upcoming stock recommendations by Mr. Pradeep Pandya and then was squaring-off his trade positions when the recommendations used to be aired on the channel making the expected impact on the volume and price of the said recommended scrips.

f) It is alleged that the sharing of impending stock recommendations in advance by Mr. Pradeep Pandya with Mr. Alpesh Furiya and consequently, Mr. Alpesh Furiya taking trade positions in such scrips only to off-load after the recommendation was given by Mr. Pradeep Pandya on his shows/ special segments itself demonstrates fraudulent nature of scheme/ artifice deployed by Mr. Pradeep Pandya and Mr. Alpesh Furiya acting in concert with each other. Moreover, it is alleged from multiple instances of the WhatsApp chats exchanged between them that Mr. Pradeep Pandya knew about the trade positions that Mr. Alpesh Furiya was taking in different scrips which he was going to recommend on his shows/ special segments about which he shared the information (regarding his impending stock recommendations) with Mr. Alpesh Furiya in advance so as to enable him to take advance trade positions in those scrips.

g) It is further alleged that Mr. Alpesh Furiya himself also used to appear on various shows like Aakhiri Sauda, Future Express, Traders Hotline etc. on CNBC Awaaz as Guest Analyst and give stock recommendations. The scrips recommended by Mr. Alpesh Furiya on the channel were recommended by him on his own.

h) Therefore, it is alleged that Mr. Alpesh Furiya had knowledge in advance regarding the scrips which Mr. Pradeep Pandya was going to recommend in his shows as Mr. Pradeep Pandya used to share the same with him in advance. Further, Mr. Alpesh Furiya also had complete knowledge in advance regarding the scrips that he was going to recommend as guest analyst on various shows as he only selected those scrips.

i) From the trading pattern of Alpesh Group Entities, it is observed that the shares were purchased in advance of the recommendation to be aired on CNBC Awaaz and were sold in a short time period post the recommendation being aired, in order to gain maximum advantage arising out of the impact of the recommendation on the price and volume of the said scrip. For BTST trades, shares were purchased one day prior to the recommendation and for Intraday trades, shares were purchased on the same day prior to the recommendation and were sold within a short period of time after the recommendation was given to the viewers to gain maximum advantage of the impact of the stock recommendation on the price and volume of the said recommended scrip. The same could not have been possible without the active involvement of Mr. Pradeep Pandya who was in possession of material, non-public information regarding the impending stock recommendations which was a close personal information only known to him and which was utilized by Mr. Alpesh Furiya to execute trades in the account of Alpesh Group Entities in synchronization with the aforesaid recommendations, because of the advanced sharing of information about those impending stock recommendations by Mr. Pradeep Pandya with Mr. Alpesh Furiya.

j) It is alleged that stocks recommendations were given by Mr. Pradeep Pandya and Mr. Alpesh Furiya during market hours on CNBC Awaaz. The following was observed from the analysis of the impact of their stock recommendations, wherever synchronization of trades by Alpesh Group was seen, on the price and volume of the said stocks, during the 15-minute time period, Pre and Post the recommendation.

i. Synchronized trades were observed on 420 unique scrip days in cash segment of NSE in the scrips recommended by Mr. Pradeep Pandya on the channel. Out of 420 scrip days, in around 91.90% scrip days the volume increased by more than 100%, in around 77.86% scrip days the volume increased by more than 200% and in around 50.00% scrip days the volume increased by more than 500%. Similarly, in around 51.19% scrip days the price of the scrip increased by more than 1%, in around 33.57% scrip days the price of the scrip increased by more than 2% and in around 9.29% scrip days the price of the scrip increased by more than 5%. Thus, the stock recommendations given by Mr. Pradeep Pandya has significant impact on volume and price of the recommended scrip.

ii. Synchronized trades were observed on 59 unique scrip days in cash segment of NSE in the scrips recommended by Mr. Alpesh Furiya on the channel. Out of 59 scrip days, in around 79.66% scrip days the volume increased by more than 100%, in around 64.41% scrip days the volume increased by more than 200% and in around 30.51% scrip days the volume increased by more than 500%. Similarly, in around 38.98% scrip days the price of the scrip increased by more than 1% and in around 10.17% scrip days the price of the scrip increased by more than 2%.

iii. Synchronized trades were observed on 190 unique stock option days in options segment of NSE in the stock options recommended by Mr. Pradeep Pandya on the channel. Out of 190 stock option days, in around 95.79% stock option days the volume increased by more than 100%, in around 74.74% stock option days the volume increased by more than 200% and in around 40.00% stock option days the volume increased by more than 500%. Similarly, in around 81.58% stock option days the price of the scrip increased by more than 1%, in around 73.68% stock option days the price of the scrip increased by more than 2% and in around 56.84% stock option days the price of the scrip increased by more than 5%.

k) It is alleged from the above that the stock recommendations given by Mr. Pradeep Pandya had more impact on the price and volume of the scrip than stock recommendations given by Mr. Alpesh Furiya. This fact was also well known to Mr. Alpesh Furiya and Mr. Pradeep Pandya as can be seen from the trading strategy of Mr. Alpesh Furiya wherein he synchronized his trades in 87.68% (420 scrip days out of total of 479 scrip days) of unique scrip days in cash segment and 100% of unique stock option days with the recommendations given by Mr. Pradeep Pandya. Further, as only Mr. Pradeep Pandya selected the stocks to be recommended by him in his shows/ segments, such high percentage of synchronization by Mr. Alpesh Furiya cannot be possible unless Mr. Pradeep Pandya shared the information regarding stocks to be recommended with him in advance.

l) It is alleged that prior to being aired on CNBC Awaaz, only Mr. Pradeep Pandya and Mr. Alpesh Furiya were aware in advance about the stocks to be recommended/ identified by them as they only selected those stocks. It is alleged that they were aware that such stock recommendations had a material impact on price and volume of recommended stock. The said information was shared by them with relevant persons/teams in the channel only few minutes prior to airing of the recommendations. Therefore, the information regarding such recommendation was material and non-public in nature prior to the same was aired on CNBC Awaaz.

m) It is alleged that there is very high degree of correlation between recommendations given by Mr. Pradeep Pandya on his shows and the trades carried out by Alpesh Group Entities in synchronization with such recommendations. Such high degree of correlation cannot be a mere coincidence. Further, it is alleged that both of them were sharing information regarding forthcoming stock recommendations through WhatsApp chats in advance and Mr. Alpesh Furiya was carrying out fraudulent trades in the account of Alpesh Group Entities based on such advance information. Further, it is demonstrated on the basis of WhatsApp Chats that both Mr. Pradeep Pandya knew regarding the position Mr. Alpesh Furiya was taking in stocks he was going to recommend which indicates meeting of minds between them.

n) Therefore, it is alleged that both of them devised the aforesaid scheme/ artifice to make unlawful profits as the cost of the general investors.

o) Mr. Alpesh Furiya (Trade Name - PAM Investment) is a registered authorized person (hereinafter referred to as "**AP**") of the Noticee. He was also controlling and managing the operations of the trading accounts of Alpesh Group entities which enabled him to execute alleged fraudulent and unfair trades in their accounts in connivance with Pradeep Pandya. The Alpesh Group Entities have carried out their trades through the Noticee. The information regarding the mode of placement of trade orders by the Alpesh Group Entities during the investigation period was sought from the said stock brokers to understand their order placement methodology.

p) Noticee, vide emails dated November 18, 2022 and January 23, 2023 submitted the following:

i. *"Mr. Alpesh Vasanji Furiya (PAM INVESTMENTS) is registered with Prudent as Authorised Person and trade were executed from terminal which was allotted to Authorised Person."*

ii. *"…the clients are AP's (Authorised Person) clients and AP has been handling the said clients. All the said clients are relative clients (family accounts) of AP. The account has been managed by the AP itself and all trades done from AP office from its allotted CTCL."*

iii. *"Since the trades are done from AP's CTCL and are family accounts, there are no voice recordings available."*

iv. *"we have send live SMS to Client which was sent through system within 5 minute, further on EOD basis auto call system in which if incase client have to press 1 for acceptance of order or 2 incase if any objection with said trade, further in addition to the same on EOD basis we had sent all trade details via SMS to client. We hereby would like to inform you that till date no any objection or complaint received from any Entity."*

q) Alpesh Furiya is an AP of Noticee and has carried out alleged fraudulent trades in the accounts of Alpesh Group entities. Noticee being the SEBI registered trading member bears the statutory responsibility for all acts of omission and commission of his authorised person(s) as the offices of the APs wherein the broker has provided its trading terminal are to be treated as branch office of the trading member. Therefore, it is alleged that Noticee bears the vicarious responsibility for all the alleged adverse observations with respect to the role of its AP viz. Mr. Alpesh Furiya (Trade Name - PAM Investment) pertaining to the trading accounts of Alpesh Group Entities and has allegedly violated SEBI Circular MIRSD/ DR-1/ Cir-16/09 dated November 06, 2009.

r) It is alleged from the above that on being asked to provide the evidence regarding all the orders placed by Alpesh Group Entities during the investigation period in terms of the SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, Noticee could not provide any order placement evidence stating that that since the trade orders were placed through the CTCL terminal allotted to its AP (Mr. Alpesh Furiya) in the family accounts of the AP, it does not have any voice recordings. Hence, it is alleged that Noticee failed to obtain and keep the evidence of order placement by the AP.

s) Therefore, Noticee is allegedly in non-compliance of the SEBI Circulars viz. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 and MIRSD/ DR-1/ Cir-16/09 dated November 06, 2009 read with Regulations 29 and 30 of Brokers Regulations.

4. The Noticee replied to the SCN vide letter dated June 30, 2023 stating, inter alia, the following:

- *With reference to para 1, we deny to our knowledge of any correlation in the alleged Buy Today Sell Tomorrow (BTST) trades executed by our authorized person Mr. Alpesh Furiya (AP) registered with us under the name and style of PAM Investment (PAM) and one Mr. Pradeep Pandya (PP) who are alleged to have traded ahead of recommendations made during television shows on CNBC Awaaz hosted/ co-hosted by the said Mr. Pradeep Pandya. We further deny to our knowledge that the activity of the AP and the stock recommendations given by PP apparently had an impact in the price/ volume of the said scrips.*

- *We refer to paras 3, 4 and 5 and deny to our knowledge that certain entities related / associated with the AP carried out trades ahead of recommendations given by PP and or given by the AP and in any event, such trades and the SCN fails to establish the reasons why we ought to have been aware of such trades and/ or any communication between the AP and PP. Otherwise too, the number of calls and the SMS between the AP and PP and the absence of such calls and SMS between the AP and PP with others could translate into any violation on our part. In any event frequent communication or otherwise between the AP and PP is irrelevant to hold us in violation of any regulation.*
- *In so far as the allegation in para 7 and 8 are concerned that Mr. PP and the AP were in connivance with each other and were fraudulently fixing/ picking up scrips to be recommended by PP in his television shows, we deny the same to our knowledge and in any event the SCN fails to establish any violation on our part. Further, the allegation of "multiple instances of Whatsapp chats" has no legs to stand on and it could never be alleged that we were aware of the same and or were in a position to determine the same. Under the circumstances since no allegation is imputed against us no adverse inference could be drawn against us.*
- *In so far as the allegation in para 9 ,10,11,12,13,14 and 15 are concerned, we state the SCN has failed to establish how the appearance of the AP in various T.V shows, his having knowledge in advance, sharing the same with PP, trading pattern of the so called Alpesh Group Entities, their possessing material and non-public information, impact on price and volume etc., existence of a very high degree of correlation between recommendations could form an opinion or conclusion against us, leave aside any allegation. Assuming that the said allegations are true, we do not admit the same and deny all the allegations and submit that acts of third parties could never be imputed on us as wrongly sought to be done in the SCN.*
- *We deny to our knowledge that the AP executed the alleged fraudulent and unfair trades in connivance with PP or otherwise as wrongly alleged in para 17. Assuming without admitting that exists fraudulent and unfair trades in connivance with PP or otherwise, no liability could be burdened on us.*
- *The contents of para 19 are denied in toto. It is submitted that assuming without admitting even if the AP carried out fraudulent trades, we could never be a held in violation of SEBI circular dated 06.11.2009. The SCN is desperately short of alleging that the acts of omission and commission, if any, could translate into any vicarious responsibility on our part. The SCN is grossly silent on the reasons of the applicability of the circular dated 06.11.2009 to us when the said circular is issued to the Managing Directors/Chief Executive Officer/Executive Directors/Officiating Executive Directors of all the Recognized Stock Exchanges and not addressed to stock brokers (albeit us). Thus, relying on the circular vitiates the present proceedings.*
- *We state that the contents of para 20 are totally out of context and irrelevant in so far as any and all reference is made to circular dated 22.03.2018. We submit that the SCN was traversed beyond point 7 a of the said circular and alleged "vicarious responsibility" for the alleged adverse observations with respect to the role of our AP. We submit that point 7 could never be stretched to charge us with vicarious responsibility since even otherwise the said circular*

does not mandate violation in terms of criminal act. We state that we are in compliance with 7 b to 7 g of the said circular. Further, still if at all, the present proceedings are for violations of circulars read with Regulation 29 and 30 of SEBI Stock Brokers Regulations, 1992, such violation could by no stretch of imagination culminate into a vicarious responsibility assuming a criminal taint.

- *As regards to para 20 alleging that we could not provide any order placement evidence since the orders were placed through CTCL terminal allotted to our AP and that we do not have any voice recording of such placement of orders, it is submitted that the SCN itself observes that the orders were placed through the CTCL terminal allotted to the AP. We understand that the requirement of maintenance of order placement evidence and voice recording is mandated when clients place orders over the phone and there could never be a case to maintain such records by the AP for the terminal under CTCL since orders are punched by the AP directly in the terminal and there is no requirement by the clients of the AP to place orders over the phone. Under the circumstances, maintenance of order placement evidence and voice recording could never be alleged as a violation. Otherwise too, relying on SEBI circular dated 22.03.2018 is irrelevant and out of context since the same deals with unauthorized trading by stock brokers. On a cursory glance, point II of the said circular clearly states that the circular is issued to consolidate earlier circulars dated 26.09.2017, 30.11.2017 and 11.01.2018 for unauthorized trades pertaining to investor complaints. Invocation of the said circular is ex facie wrong and misleading since the same deals with investor complaints when a dispute arises between a client and a stock broker. The SCN is short of citing any investor complaint, far less any unauthorized trading.*
- *With regards to para 21 of the SCN we submit that even a cursory look at point III of the said circular it is evident that keeping evidence of the client placing such order could be, inter alia, in the form of:*

  a. Physical record written & signed by client,
  b. Telephone recording,
  c. Email from authorized email id,
  d. Log for internet transactions,
  e. Record of messages through mobile phones,
  f. Any other legally verifiable record.

It is evident that recourse to the circular is required when a dispute arises and a broker shall produce the above mentioned records for the disputed trades. Evidently, we reiterate that the SCN has not put on record any disputed trades of our clients neither has the clients filed any complaints for the disputed trades. Assuming whilst denying that the said circular is inapplicable, even so the broker could justify the reasons for the disputed trades and depending upon the merit of the same, other appropriate evidence like post trade confirmation by client, receipt/ payment of funds/ securities by clients should be considered. In the absence of any disputed trades and further there being no dispute on *post trade confirmations as well as receipt/payment of funds/securities by the clients it is not open to adjudicate the matter as sought in the SCN.*

5. In the interest of natural justice, an opportunity of personal hearing was scheduled on November 9, 2023 vide notice dated October 31, 2023. The Noticee vide email dated November 7, 2023 sought for an adjournment. Acceding to its request another opportunity of personal hearing was given to the Noticee on December 5, 2023. Another opportunity of personal hearing was given to the Noticee on December 15, 2023 vide email dated December 11, 2023. Vide email dated December 15, 2023, Noticee sought for another date of hearing. Acceding to its request another opportunity of hearing was given to the Noticee on December 21, 2023. The Authorised Representative of the Noticee appeared on the scheduled date and reiterated the submissions made vide letter dated June 30, 2023.

6. It is observed that the Whole Time Member, SEBI passed an order dated June 11, 2024 in the same matter in respect of entities including Pradeep Pandya, Alpesh Furiya (registered authorized person of the Noticee) and Alpesh group entities restraining them from accessing the securities market for a period of 5 years and directing Alpesh Furiya and Alpesh group entities to disgorge the unlawful profit made with simple interest at the rate of 12% per annum. Subsequent to the passing of the order another opportunity of submitting additional reply was given to the Noticee vide email dated June 12, 2024. The Noticee made additional submissions vide letter dated June 30, 2024 stating, inter alia, the following:

   - *We have filed the merger application of Prudent Broking Services Pvt Ltd with its holding company Prudent Corporate Advisory Services Ltd with Regional Director, ROC Ahmedabad and we expect the Merger Approval order shortly.*
   - *We submit that we were not aware of any close relationship between Mr. Alpesh Furiya (AP) and Mr. Pradeep Pandya PP as it was wrongly alleged have traded ahead of recommendations made during television shows on CNBC Awaaz hosted/ co-hosted by the said Mr. Pradeep Pandya.*
   - *We deny that the CDR relied upon in the para 3,4 and 5 of the SCN has any evidential value and that admittedly no such certificate of authenticity has been placed on record in the SCN as mandated under Section 65B (4) of the Indian Evidence Act, 1872.*

- *Further, the SCN has not only failed to deal with the statutory requirements of Section 65B (4) of the Evidence Act, 1872 but also is silent why the mandatory requirements to produce and place on record such certificate was not required in the present proceedings. Hence, no adverse conclusion could ever be arrived at against us, more so since the burden of proof has not been discharged in the SCN.*
- *We submit that the SCN fails to establish any violation on our part while alleging "**multiple instances of Whatsapp chats**" between PP and AP and it could never be alleged that we were aware of the same and or were in a position to determine the same. The SCN fails to take into account how the appearance of the AP in various T.V shows, his having knowledge in advance, sharing the same with PP, trading pattern of the so called Alpesh Group Entities, their possessing material and non-public information, impact on price and volume etc., existence of a very high degree of correlation between recommendations could draw any conclusion or allegation against us.*
- *With reference to para 16 of the SCN alleging that both of them devised the aforesaid scheme/artifice to make unlawful profits at the cost of general investors is untrue to our knowledge and hence we deny the same more so when the said para has admittedly concluded that both of them devised the scheme which could be thus concluded that we had no role to play in the said scheme and thus the SCN against us should be withdrawn.*
- *We submit that we had no roie to play in any alleged scheme and to our knowledge neither AP nor PP had devised the aforesaid scheme/artifice as per SCN to make unlawful profits at the cost of general investors.*
- *The SCN is grossly silent on the reasons of the applicability of the circular dated 06.11.2009 to us when the said circular is issued to the Managing Directors/Chief Executive Officer/Executive Directors/Officiating Executive Directors of all the Recognized Stock Exchanges and not addressed to stock brokers (albeit us).*
- *We submit that the SCN was traversed beyond point 7 a of the said circular dated 22.03.2018 and alleged "vicarious responsibility" for the alleged adverse observations with respect to the role of our AP. We submit that point 7 could never be stretched to charge us with vicarious responsibility since even otherwise the said circular does not mandate violation in terms of criminal act.*
- *It is evident that recourse to the circular is required when a dispute arises and a broker shall produce the records for the disputed trades. Evidently, we reiterate that the SCN has not put on record any disputed trades of our clients neither has the clients filed any complaints for the disputed trades.*

CONSIDERATION OF ISSUES AND FINDINGS

7. The issues that arise for consideration in the instant matter are:

(a) Whether the Noticee have violated SEBI Circulars viz. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 and MIRSD/ DR-1/ Cir-16/09 dated November 06, 2009 read with regulations 29 and 30 of Brokers Regulations;

(b) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB on the Noticee?; and,

(c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

8. The relevant provisions of regulations 29 and 30 of Brokers Regulations, allegedly violated by the Noticee is mentioned hereunder:

29. Power to remove difficulties
In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars.

30. Power to specify procedures, etc. and issue clarifications
For the purposes of implementation of these regulations and matters incidental thereto, the Board may specify norms, procedures, processes, manners or guidelines as specified in these regulations, by way of circulars to recognised stock exchange(s) and recognised clearing corporation(s).]

SEBI Circulars viz. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018

https://www.sebi.gov.in/legal/circulars/mar-2018/circular-on-prevention-of-unauthorised-trading-by-stock-brokers-_38365.html

MIRSD/ DR-1/ Cir-16/09 dated November 06, 2009

https://www.sebi.gov.in/legal/circulars/nov-2009/market-access-through-authorised-persons_3182.html

FINDINGS

9. It was contended by the Noticee that the CDR between Alpesh Furiya and Pradeep Pandya relied upon does not have any evidential value as no certificate of authenticity under section 65B(4) of the Indian Evidence Act, 1872. I find that SEBI has tried to establish the connection between Alpesh Furiya and Pradeep Pandya through the telephonic communication between them and also exchange of whatsapp messages. It is noted that there is no certificate of authenticity under section 65B of the Indian Evidence Act, 1872 for the telephonic conversation. However, the whatsApp chats were noticed while combing through the dump of the office e–mails of Pradeep Pandya provided by CNBC Awaaz. It is noted that CNBC Awaaz while providing this data had also provided a certificate under section 65B of the Indian Evidence Act, 1872, certifying that the information shared with SEBI was a true copy of the information as available on the computer systems of the Company. It is noted that what is being relied upon is an attachment to an email which Pradeep Pandya sent to his office email ID. The certificate provided by CNBC Awaaz confirms that the information shared is a true copy of the said email as stored on the computer systems of the Channel.

10. I note that the Noticee has filed merger application with its holding company Prudent Corporate Advisory Services Ltd. However, it is also noted that the application is pending and the final order in this matter is not passed. Therefore, there is no bar in continuing with the adjudication proceedings.

Whether the Noticee have violated SEBI Circulars viz. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 and MIRSD/ DR-1/ Cir-16/09 dated November 06, 2009 read with regulations 29 and 30 of Brokers Regulations.

11. It is alleged that Noticee could not provide any order placement evidence by clientsp and therefore, is in non-compliance of the SEBI Circulars viz. SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018 and MIRSD/ DR-1/

Cir-16/09 dated November 06, 2009 read with Regulations 29 and 30 of Brokers Regulations.

12. It is noted that Pradeep Pandya, while serving as an anchor for CNBC Awaaz, shared confidential information regarding upcoming stock recommendations with Alpesh Furiya and vice-versa. Alpesh Furiya, capitalizing on this privileged information, executed trades through his own accounts and those of related entities, positioning himself to profit before the recommendations were publicly aired. Alpesh Furiya was also controlling and managing the operations of the trading accounts of Alpesh Group entities which enabled him to execute alleged fraudulent and unfair trades in their accounts in connivance with Pradeep Pandya. The Alpesh Group entities have carried out their trades through the Noticee. Further, vide email dated November 18, 2022, the Noticee informed SEBI that Alpesh Furiya is registered with it as an Authorised Person (hereinafter referred to as "AP").

13. The Noticee contended that the circular dated November 6, 2009 is issued to the Managing Directors/ Chief Executive Officer/ Executive Directors/ Officiating Executive Directors of all recognized Stock Exchanges and not to stock brokers. I note that stock exchange is an institution which assists, regulates or controls the business of buying, selling or dealing in securities. A stock broker is a registered intermediary with SEBI and is a member of a stock exchange. SEBI circular dated November 6, 2009 is addressed to the Stock Exchange so that framework governing the market access through authorized person can be disseminated to all its members. As per the said circular, any person who is appointed as such by a stock broker works as an agent of the stock broker. In the instant case, Alpesh Furiya is an AP of the Noticee. Therefore, the Noticee was the principal and Alpesh Furiya worked as its agent. Further as per the said circular, the stock broker is responsible for all acts of omission and commission of his APs.

14. With respect to the allegation that the Noticee on being asked it failed to provide the evidence regarding all the orders placed by Alpesh Group entities during the

investigation period in terms of the SEBI Circular SEBI/HO/MIRSD/DOP1/CIR/P/2018/54 dated March 22, 2018, it stated that since the trade orders were placed through the CTCL terminal allotted to its AP (Mr. Alpesh Furiya) in the family accounts of the AP, it does not have any voice recordings.

15. The investigation report has not provided the role played by the Noticee for the fraudulent trades of the AP as held by WTM in his order dated June 11, 2024. The mere fact of the trades having been dealt through the CTCL terminal by the AP of the Noticee is not sufficient evidence as it is not corroborated by the knowledge that the Noticee knew such fraudulent trades were taking place and that the Noticee had allowed them to be carried out despite such knowledge. The investigation report has no information about the knowledge of the Noticee nor has same been alleged in the SCN.

16. Given the above, based on mere trading of the AP through CTCL terminal of AP it may not be sufficient evidence to hold the Noticee responsible for the action of AP. Thus, due to lack of evidence the Noticee cannot be held liable as alleged.

ORDER

17. In view of the above, I do not find it to be a fit case for imposition of penalty under section 15HB of SEBI Act. Hence, the SCN dated June 8, 2023 is disposed of, without imposition of penalty.

18. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: July 18, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**